IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH,

AT HYDERABAD

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION Nos.5320, 5345, 5452, 5453, 5454, 5455, 5456, 5457, 5458,, 5459 and 5460 OF 2006

Date:20.03.2006

BETWEEN:

A.V. Venkaiah and others

…. PETITIONERS

And

1. The Revenue Divisional Officer, Narasapur, West Godavari District, and others.

…. RESPONDENTS

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION Nos.5320, 5345, 5452, 5453, 5454, 5455, 5456, 5457, 5458,, 5459 and 5460 OF 2006

COMMON ORDER:

All the petitioners are FP shop dealers of Bhimavaram Town. The third respondent had earlier issued notices, dated 6.10.2004, calling upon the petitioners to show cause why action be not taken against them as in an enquiry, it was revealed that

there were specified bogus cards in the petitioners' area of operation and the petitioners were deliberately distributing rice, sugar and other essential commodities on the basis of such bogus cards. The petitioners submitted explanations denying the allegations and specifically stating that it is not within their domain to determine whether the cards are genuine or bogus and that they were distributing essential commodities on the basis of the cards in circulation, duly issued by the competent authorities. The third respondent, thereafter, issued fresh show cause notices on 16.5.2005, framing charges and calling upon the petitioners to explain why action be not taken. Eventually, without recording reasons, or an analysis or consideration of the explanations submitted by the petitioners, the third respondent by an order dated 10.6.2005, cancelled the authorizations of petitioners.

Aggrieved, the petitioners filed writ petitions in this Court. This Court granted interim suspension of the orders of cancellation of the petitioners' authorizations. Eventually, by a common order, dated 25.8.2005, the writ petitions filed by the petitioners and some others were allowed and the concerned Revenue Divisional Officers (RDOs) were directed to consider the matters afresh and in the light of the observations in the judgment.

This court recorded a clear conclusion that the finding (of guilt) recorded against the petitioners are at variance with the averments in the counter affidavit filed by the Principal Secretary, Revenue Department (who was impleaded as the 5th respondent in the writ petition, by the court) and also at variance with findings recorded by the Director General of Vigilance in the vigilance report No.34 dated 10.3.2005. This Court found that in the vigilance report No.34 supra, the vigilance team after receiving complaints conducted door to door verification, traced out bogus ration cards attached to several FP shops in Bhimavaram town and thereafter the Director General concluded that on account of lack of supervision by the MRO Smt.Jyothi and Smt.Seetamahalakshmi during their periods and by the Deputy Tahsildar Navamuni Raju, the PDS rice and kerosene coupon books were issued to 350 white and 56 pink bogus cards, even though the alleged card holders were not in existence. The vigilance report also recorded that dealers of 9 FP Shops obtained allotment of kerosene every month on the strength of such bogus cards. On the basis vigilance report above, this court concluded that the responsibility was fixed only on the Mandal Revenue Officer (MRO) and Deputy Tahsildars and there was not even a suggestion that the FP Shop dealers actively connived with those officials in

making out all the bogus ration cards. On another charge on which the authorization of the petitioners were cancelled, this court held that as regards the improper grant of permission to 237 petty vendors in Bhimavaram town, vigilance team conducted random verification of the cards to the extent of 20% and found that the petty vendors whose names are mentioned in the vigilance report and shops Nos.1,4 and 12 of Varuna Super Bazaar were responsible for this misappropriation. The vigilance report also found supervisory lapse on the part of the MROs for the last decade. This court, on the perusal of the vigilance report, found that the Director General had recommended cancellation of 802 white and 173 pink ration cards, which were detected and established as bogus during the enquiry. The vigilance report did not recommend any disciplinary action against the petitioner. But in the concluding portion of the report the Director General had requested the Principal Secretary to Government to fix up accountability on the concerned District Supply Officer and the Assistant Supply Officer with reference to the existence of bogus ration cards and inspection of FP Shops and also recommended deterrent action against them. On the basis of an elaborate analysis of the counter of the Principal Secretary and the vigilance report this court concluded that the RDO concerned had failed to apply his mind since the vigilance report No.34 was either not available with the RDO or was made available only after passing the cancellation orders. On the above analysis the orders of cancellation were set aside and the matter remitted back to the RDO for redetermination.

Subsequently, the third respondent issued fresh show cause notices dated 9.11.2005, setting out seven (7) charges as against from four (4) charges earlier alleged against the petitioners. The petitioners submitted their explanations and requested for personal hearing in the matter.

The third respondent by stereotyped proceedings, dated 20.12.2005, cancelled the petitioners' authorizations. As the petitioners had an appellate remedy under the relevant control order, they preferred appeals to the Joint Collector concerned. Initially, however, they filed writ petitions against the orders of cancellation. This Court disposed of the writ petitions by the judgments dated 28.12.2005, directing the petitioners to avail the appellate remedy, while granting stay of the orders of cancellation of authorizations, pending disposal of the appeals by the Joint Collector.

Thereafter, the Appellate Authority – the Joint Collector, West Godavari District by

the orders impugned in this batch of writ petitions (dated 25.2.2006), dismissed the appeals. The appellate order passed by the Joint Collector, West Godavari District is illustrative and instructive for its irrelevance and requires to be reproduced.

The order of the Joint Collector, in one of the appeals by one of the petitioners bearing reference No.Roc.Cs.I/8/Appeal/2006 dated 25.02.2006, to the extent relevant and material for the purpose of this *lis* reads as under:

> The main grounds of appeal are that the lower court failed to note that the Vigilance and Enforcement did not find fault with him in the report and even they did not recommend for any action and he was nothing to do with the issue of cards. The appellant has prayed this court to set aside the orders of the RDO, Narsapur.
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> This case has come up for final hearing before this Court on 18.2.2006. Heard the arguments of the advocate for the appellant and perused all the material papers available on record.
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> Upon perusal of the lower court record it is observed that the appellant dealer has resorted to malpractice by securing ration cards of dead and migrated cardholders drawing ration on them unauthorisedly for pecuniary gains and that he surrendered 42 white and 28 pink ration cards before the Vigilance and Enforcement officials when they conducted door to door verification in Bhimavaram and the authorities have also detected 83 white and 26 pink bogus cards upon which the dealer has drawn and misappropriated the essential commodities. Since the irregularities are grave in nature. I see no reason to interfere with the orders passed by the Revenue Divisional Officer, Narsapur, canceling the authorization of the appellant dealer. In the result, the following order is hereby made.
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> "While confirming the order passed by the RDO, Narsapur, the appeal filed by the appellant is hereby dismissed".
>
> A revision against this order under clause 21(i) of the A.P. State Public Distribution System Control Order, 2001, lies before the Collector, W.G. District, Eluru, within 30 days from the date of receipt of this order.

One of the FP shop dealers, Sri M.V. Subbaiah, is the writ petitioner in W.P.No.5452 of 2006. The RDO concerned had cancelled his authorization by proceedings dated 20.12.2005. The cancellation was on the basis of the conclusion as to the petitioner's guilt in respect of seven charges.

Charge No.1 was that being the FP shop dealer, he had resorted to malpractice by securing ration cards of dead and migrated cardholders and drawing ration on them unauthorisedly. The order of cancellation does not deal with or analyse the explanation submitted by the petitioner. The petitioner had denied the charge and stated that he was not aware that any of the cards was “Bogus”. The primary authority held that in the Vigilance report No.34 dated 10.3.2005 it was stated that the FP shop dealer had surrendered 42 White and 28 Pink Bogus cards before the Vigilance and Enforcement Officials. On this fact drawn from the Vigilance report, dated 10.3.2005, a copy of which was never furnished to the petitioners nor communicated to them either, the RDO recorded that the charge is proved and the petitioner had violated specified clauses of the relevant Control Order, and the conditions of his authorization.

Charge No.2 was that the petitioner had failed to bring to the notice of the Revenue and Civil Supplies authorities, the details of the bogus ration cards. The petitioner denied the charge. The RDO concluded that as the petitioner had himself surrendered the bogus cards to the Vigilance and Enforcement Authorities, the explanation of the petitioner could not be countenanced and the petitioner had misused the essential commodities on the bogus ration cards and thus, contravened the provisions of the Control Order.

Charge No.3 was that as a responsible FP Shop dealer the petitioner was clandestinely selling essential commodities in the black market and was deriving huge profits every month. The petitioner denied the charge. The RDO concluded that the petitioner was required to show the backlog of essential commodities at the end of every month, if he did not distribute the essential commodities on the bogus/ghost cards held by him. He had not done so, though he had surrendered the bogus cards to the V&E officials. By not furnishing the information (as to the bogus cards held by him), the petitioner had induced the administration to contravene the provisions of Cl.14(1) of the Control Order, was the conclusion.

Charge No.4 was that the petitioner deliberately surrendered 42 white and 28 pink ration cards before the V&E officials when they conducted a door to door verification in Bhimavaram for detecting the bogus ration cards from 24.9.2004 to 30.9.2004 along with the Revenue and Municipal officials and that the petitioner had

drawn essential commodities and had misappropriated rice and kerosene worth Rs.1,37,592/-. The petitioner in his explanation had stated that he was not put on notice of any enquiry by the V&E officials, the enquiry if any was behind his back and he had no clue or information as to the result of the enquiry. He also denied that the V&E officials had conducted a door-to-door enquiry. The RDO in his findings on this charge held that the vigilance report No.34 clearly indicates the door-to-door survey conducted during September 2004. He also held that no intimation need be given to the FP shop dealer before such survey.

The 5th charge is that during the verification of cards taken up in the area of the petitioner's shop, the V&E officials had detected 83 white and 26 pink bogus ration cards on which the dealers had drawn essential commodities and had misappropriated rice and kerosene worth Rs.2,69,136/-. While denying the charge the petitioner submitted that had the officials conducted periodical enquires the question of misappropriation of essential commodities on the basis of bogus ration cards for 27 months would not have occurred and that the charge is false as far as he is concerned. The RDO in his findings on this charge recorded that as the vigilance report No.34 had recorded that the officials detected the specified number of white and pink ration cards during the door to door survey, it was a conclusive proof that the bogus cards were detected in the petitioner's area and that the petitioner had knowingly distributed the essential commodities and that he is liable therefore.

Charge No.6 is that the petitioner had managed the Revenue officials and obtained rice and kerosene coupons on the bogus ration cards with him in December 2002 and was therefore responsible for misappropriation of 486.36 Qt. of rice worth Rs.2,91,816; and
12,768 Lt. of kerosene oil worth Rs.1,14,912/- from January 2003 to September 2004 i.e., 21 months. The petitioner denied this charge. The RDO found that bogus cards were surrendered by the petitioner before the V&E officials, these cards were in circulation till the verification and survey in September 2004; that as per the Rules in force, drawal on ration cards should be only through coupons and therefore it is clear that the petitioner had managed the Revenue officials and obtained rice and kerosene coupons on the strength of the bogus cards held by him and had drawn rice and kerosene on such cards for 21 months.

The 7th and last charge is that 3 times the value of the cost of the misused rice and kerosene amounting to Rs.12,20,184/- is required to be remitted to the Government by the petitioner by the FP shop dealer. The petitioner denied his liability. The RDO recorded that the vigilance report No.34 had established that the dealer had misappropriated the stocks for 21 months and as per Cl.17(c) of the A.P. State Public Distribution System Control Order 2001, if any FP shop dealer diverts stocks either wholly or partly he is liable to pay the three times of the value as penalty.

The several orders of the primary authority all dated 20.12.2005 are stereotype orders with only the particulars of each dealer and the specifics altered. Despite the judgment of this court dated 25.8.2005 in which it was clearly recorded that the vigilance report No.34 dated 10.3.2005 had not at all recorded any culpability of FP Shop Dealers but had only pointed out the involvement of the MROs and Dy. Tahsildar, the primary authority – the RDO had based his conclusions exclusively on the vigilance report No.34. The said report was drawn up wholly behind the back of the petitioners and the petitioners were not furnished a copy of the report nor the veracity of the vigilance report established. The petitioners all along contended that issuance of bogus ration cards is not in their hands and is a matter dealt exclusively with by the MRO, the Dy. Tahsildar or the Civil Supplies Officials. They are neither involved nor associated with the issuance of ration cards. It is the specific case of the petitioners that they have to supply the essential commodities on the basis of the cards duly issued. Despite this specific explanation of the petitioners the primary authority failed to record the relevant reasons for the conclusion of the petitioners' guilt. The primary authority should have clearly recorded a finding on whether the petitioners were involved in the issuance of the so called bogus ration cards. The primary authority did not apply his mind and failed to rationally assess the explanation of the petitioners. The question is what is the meaning of the expression "bogus ration cards?" Are they ration cards forged by the petitioners or cards duly issued by the competent authority but in favour of non-existent or died persons. If the latter, the further question is whether the ration cards were issued on the recommendations of the petitioners as FP shop dealers in consultation with them, or by the concerned officials themselves.

From the tenor of the several proceedings leading to the RDO's order dated 20.12.2005, it would appear that there was a massive failure of the public

distribution system in Bhimavaram town. As is apparent from the vigilance report No.34, the MROs and Dy. Tahsildars were clearly involved in the issuance of ration cards in favour of non-existent or dead persons. This resulted in illegal diversion of essential commodities in excess of the actual requirement. Certainly the responsible persons should be brought to book. This could be done only by ruthless and relentless pursuit of those officials responsible for issuing the bogus ration cards. Instead of pursuing such a course of action and for whatever reasons, the regulatory authorities appear to have determined to somehow fasten the responsibility on the FP shop dealers. If the FP shop dealers were in any way involved in the issuance of bogus ration cards then such a charge must be clearly and specifically famed spelling out the details of their involvements in the issuance of bogus ration cards and clear findings must be recorded that these dealers had been instrumental or clearly involved in the issuance of the bogus ration cards. If the petitioners cannot be held responsible for the issuance of bogus ration cards they cannot also be held responsible for drawing and distributing essential commodities on the basis of such bogus ration cards. There is another aspect of the matter. If the petitioners had known that some ration cards were bogus, even then they could be proceeded against for failing to inform the competent authorities about the circulation of the bogus ration cards, but then there must be a clear charge that the petitioners were aware of the fact that some ration cards were issued in favour of non-existent or dead persons and that they nevertheless failed to inform the relevant authorities.

Such is not the charge nor is such the finding. In his findings on charge No.3 the RDO had recorded that by not furnishing the information of the bogus cards held "the dealer had made the administration to contravene the provisions of Cl.14(1) of the Control Order". The blame for issuance of the bogus cards has been clearly placed on the petitioners while the cards were issued by the authorities. There is also nothing in either the show cause notice or the RDO's order dated 20.12.2005, which even by implication suggests the petitioners' involvement in the issuance of the bogus cards. The quantification of the illegal diversion of the rice and kerosene has also been arrived at on such flimsy analysis.

This case involves not merely the cancellation of authorization of a few FP shop dealers, which by itself is certainly a serious matter for the FP shop dealer concerned. The order of cancellation appears to be a camouflage and a cosmetic exercise of finding scapegoats with a view to shield the real offenders. As recorded

in the common judgment of this court dated 25.8.2005, in the earlier round of litigation, the Principal Secretary to the Government failed to furnish the report after causing an enquiry to be conducted (as directed by the order of this court dated 12.7.2005).

Believing in the vitality and integrity of an appellate remedy, the petitioners preferred an appeal to the Joint Collector. The appellate authority was required to consider the several appeals of the petitioners in such context of anarchic exercise of disciplinary power by the RDO. However in wholesome disregard of the fundamental discipline of appellate scrutiny, the Joint Collector replicated the irrelevance and indiscipline of the RDO. The Joint Collector's order is facially a detailed order. However, shorn of the earlier history the appellate scrutiny and the appellate reasoning is merely that portion which has been extracted in this judgment supra.

True it is, the petitioners have a revisional remedy before the Collector. But they apprehend – and an apprehension that cannot be wholly brushed aside – that the revisional authority would merely reiterate the concurrent irrelevancies in exercise of the primary and appellate jurisdictions. In view of the illustrative irrelevance in the orders of the primary authority – the RDO, and of the Appellate Authority – the Joint Collector, in the considered view of this Court, these writ petitions ought not to be rejected on the ground that the petitioners have an effective alternative revisional remedy before the Collector, as the appellate orders have very sadly disabused the faith of the petitioners in the forensic discipline of the Appellate Authority.

The petitioners do not function as FP shop dealers at the subjective pleasure of the Civil Supplies Authorities exercising regulatory power under the Control Order. Their continuance as FP shop dealers is a right, which is protected in law and their removal can only be on rational grounds and on a conclusion of their misconduct established by some minimal fair and rational procedure of adjudication. Irrational, arbitrary, whimsical, speculative and tyrannical conclusions of fact based on vacuous assumptions cannot be a substitute for the minimum levels of forensic discipline that are required to be exercised in quasi-judicial adjudicatory forums. The petitioners' explanations in their several applications in response to the charge memos are that they are not responsible for the issuance and circulation of bogus ration cards. It is their specific case that they do not issue ration cards. Neither the orders of the RDO nor the appellate orders of the Joint Collector even marginally

address this issue. From out of the blue, the RDO comes to the conclusion as to the petitioners' guilt and from out of an even less substantial substratum the Joint Collector concurs with such arbitrary conclusions of the RDO.

This Court must record its deprecation of the total lawlessness of the RDO and Joint Collector with regard to the exercise of quasi judicial powers of control over the FP shop dealers. A copy of the Vigilance report dated 10.3.2005 was not communicated to the petitioners. This non-communicated report is the foundation for the conclusions by the RDO. The Joint Collector is satisfied with the manner in which the RDO had exercised his jurisdiction and does not bother to independently examine the charges against the petitioners in the context of the explanation submitted by them nor is there even a sentence of reasoning in the orders of the Joint Collector, which could even constitute an apology for exercise of appellate jurisdiction.

This Court must presume and a presumption that is reasonably compelling, from the conferral of appellate jurisdiction in the Joint Collector that it was the intention of the law that there should be an appellate forum which would consider both the factual and legal questions arising out of an order of cancellation of an authorization so that arbitrary and capricious orders of cancellation are corrected. Judicial review is not substitute for such appellate scrutiny. Nevertheless, by the irrational exercise of primary and appellate powers, the citizens – the petitioners are constrained to approach this Court for judicial review.

There is yet another aspect to this problem in the context of public interest. If the petitioners are in fact responsible for diversion of essential commodities and had in fact diverted essential commodities despite conscious knowledge of the existence of bogus ration cards, then by such irrational orders of the RDO and the Joint Collector, the misconduct of FP shop dealers will continue unchecked in the system. This again is subversive of public interest. It is unfortunate that such ill-trained and ill-informed regulators are let loose on the society as quasi-judicial officers.

The several orders of the Joint Collector dated 25.2.2006 dismissing the appeals preferred by the petitioners against the orders of the RDO dated 20.12.2005 (canceling the petitioners' authorizations) are wholly arbitrary and illegal. They are

bereft of any reasons recorded in support of the conclusion and beseech invalidation. The impugned orders of the Joint Collector dated 25.2.2006 are quashed. The appeals are remitted back for fresh determination. The Joint Collector, West Godavari District, Eluru, is directed to hear and dispose of each of the appeals and record clear reasons dealing with each and every objection submitted by the petitioners in their appeal grounds and pass appropriate orders and communicate the orders to the petitioners, expeditiously, and in any event, within a period of three weeks from the date of receipt of a copy of this order.

As the Joint Collector, West Godavari District has in total abdication of the appellate discipline, passed highly unsatisfactory and totally unreasoned appellate orders and has thus burdened this Court with avoidable litigation besides putting the petitioners to avoidable litigation, this Court considers it appropriate to allow these writ petitions with costs in an amount of Rs.5000/- (Rupees five thousand only) in each of the writ petitions. Of this amount, Rs.1000/- (Rupees one thousand only) shall be paid to the respective petitioners, and Rs.4000/- (Rupees four thousand only) to the Secretary, A.P. Legal Services Authority in each of the writ petitions, within a period of two weeks from the date of this order.

It is open to the State Government – the first respondent to identify whether the appellate order in its degree of negligence constitutes misconduct of quasi judicial responsibility as to warrant initiation of appropriate proceedings and whether the costs incurred by the State thereby, should be recovered from the concerned and responsible Officer instead of mulcting the public exchequer for the misconduct of a particular State authority.

Till the disposal of the appeals afresh, as directed above, by the Joint Collector, West Godavari District, the authorizations of the petitioners' shall continue and their future continuance would depend upon the appellate orders to be now passed.

A copy of this order be furnished to the secretary, A.P. State Legal Services Authority.

The writ petitions are accordingly allowed with costs.

(Goda Raghuram, J.)

20th March, 2006

Js.